

MINUTES
OF
THE UTAH RADIATION CONTROL BOARD

December 3, 2004

Cannon Health Building

Conference Room 125

288 N 1460 West

Salt Lake City, Utah 84116

BOARD MEMBERS PRESENT

Karen S. Langley, M.S., Chair,
Stephen T. Nelson, Ph.D., Vice Chair,
Dianne R. Nielson, Ph.D., Director of DEQ
Dane Finerfrock, Executive Secretary
Keith C. Barnes, J.D.
Kent J. Bradford, P.G.
Rod O. Julander, Ph.D.
Linda M. Kuse, M.S.
Gregory G. Oman, D.D.S., B.S.
Robert S. Pattison, B.S.
Dan L. Perry, B.S.
John W. Thomson, M.D.

PUBLIC

Jason Groenewold, HEAL Utah
Tye Rogers, Envirocare of Utah, Inc
James O'Neal, Private Citizen
John Tanner, Congressman Bishop's Office

BOARD MEMBERS ABSENT/EXCUSED

Joseph K. Minor, M.D.
Gene D. White, Commissioner

**DRC STAFF/OTHER DEQ MEMBERS
PRESENT**

Craig Jones, DRC Staff
Loren B. Morton, DRC Staff
Fred Nelson, Attorney for DEQ
Ray Nelson, DRC Staff
Yoli Shropshire, DRC Staff
William J. Sinclair, Deputy Director

GREETINGS/MEETING CALLED TO ORDER

The Utah Radiation Control Board convened in DEQ Building #2, Room 101, 168 North 1950 West, Salt Lake City, Utah. Karen S. Langley, Chair, called the meeting to order at 2:00 p.m. She welcomed the Board members and the public. Karen Langley indicated that if the public wished to address any items on the agenda they should sign the public sign-in sheet. Those desiring to comment would be given an opportunity to address their concerns during the comment period.

I. APPROVAL OF MINUTES (Board Action Item)

a. Approval of November 5, 2004 Minutes

Karen Langley, Chair, asked the Board Members for any corrections to the minutes of November 5, 2004. Stephen T. Nelson, Vice Chair, proposed the following changes to the Minutes:

1. Page 3, Item V. a., first paragraph, sentence which reads: “. . . Environmental stating that they had **completed the first step in a five step-process . . .**” **Changed to read: “completed one step of the five step-process . . .”**
2. Item V. a., first paragraph, sentence which reads: “. . . approval of the siting application by DRC, ” **Changed to read: “approval of the siting application by DRC was the first step they completed . . .”**
3. Page 7, Item V s., second paragraph, fourth sentence, which reads: **“Thereby prompting the Department . . .”** **Changed to read: “Thereby, prompting . . .”**

Gregory G. Oman proposed the following changes to the Minutes:

4. Page 7, Item V. d., second paragraph, first sentence, which reads: Dane asked the present **Board Member** to refer . . .” **Changed to read: “Board Members . . .”**
5. Page 7, Item V. d., third paragraph, second sentence, which reads: “It is probably more accurate to say . . . interested in this **regulatory creed** that . . .” **Changed to read: “regulatory creep . . .”**
6. Page 8, Item V. d., fifth paragraph, first sentence, which reads: Stephen T. Nelson suggested that a subcommittee of the **Board Member . . .**” **Changed to read: “Board Members . . .”**
7. Page 8, Item V. d., fifth paragraph, first sentence, which reads: “. . . get together and look at the existing plan, look at the **statue**, . . .” **Changed to read: “statute . . .”**
8. Page 9, Item V. e., third paragraph, first sentence, which reads:

“Dane said that section (b), is **referring year 2006,which** might change . . .” **Changed to read: “referring to the year 2006, which . . .”**

9. Page 9, Item V. e., third paragraph, first sentence, which reads: “. . . a report prepared in advance of **October, 2006** to present . . .” **Changed to read: “ October 2006 . . .”**
10. Page 9, Item V. e., fourth paragraph, seventh sentence, which reads: “Dane said that as Bill Sinclair explained . . . the Hazardous Waste Task Force, **the have** emphasized . . .” **Changed to read: “they have . . .”**

Karen S. Langley, Chair, proposed the following changes to the Minutes:

11. Page 7, Item V. d., second paragraph, fifth sentence, which reads: “. . . the Department **should to pursue statutory** change.” **Change to read: “should pursue . . .”**
12. Page 8, Item V. d., first paragraph, first sentence, which reads: “Dane suggested the Board decide whether or not . . . or has the task according to the **statue** been **completed**” **Changed to read: “statute been completed.”**
13. Page 9, Item V. e., fifth paragraph, first sentence, which reads: Dane said that DRC would . . .and present **it an upcoming** Board meeting.” **Change to read: “. . . and present it at an upcoming Board . . .”**

**MOTION MADE BY LINDA M. KRUSE TO APPROVE THE
MINUTES OF NOVEMBER 5, 2004, AS CORRECTED,
SECONDED BY KENT J. BRADFORD.**

MOTION CARRIED AND PASSED UNANIMOUSLY

II. RULES
No Items

III. RADIOACTIVE MATERIALS LICENSING/INSPECTION
No Items

IV. X-RAY REGISTRATION/INSPECTION
No Items

V. RADIOACTIVE WASTE DISPOSAL (Board Information item)

a. Update from the “Radioactive Waste Management Plan” URC Board Subcommittee – Karen S. Langley, Chair

Karen S. Langley, Chair, provided copies of her notes from the URC Board Subcommittee to the Board. They addressed the concerns by the Legislative Auditors’ Report on the Radioactive Waste Management Plan.

Karen S. Langley, Chair, said the Subcommittee reviewed the statute, the comments from the Legislative Auditors’, and reviewed historic materials and anecdotal information.

Some of the topics discussed:

1. The completion of the Radioactive Waste Management Plan fulfilled its statutory directive.
2. In the context of the Auditors’ discussion with Dane Finerfrock and Chairwoman Langley, the comments from the Auditors stem from their concern the RWMP (Radioactive Waste Management Plan) should have been used to impact “regulatory creep.” Regulatory creep relates to the types of waste and/or character of wastes that have been licensed since the initial authoring of the Radioactive Waste Management Plan.

Ms. Langley, Chair, said the Subcommittee’s opinion was based on the regulatory process. The RWMP (Radioactive Waste Management Plan) would not have a direct effect on the decision-making process of licensing radioactive waste. It does not, however, negate its potential as a source of information.

3. The Radioactive Waste Management Plan is a document that could “bear” updating. It could be utilized as a point of information in reviewing questions, requests and issues pertaining to radioactive waste. The plan has met its original directive: it is proposed, however, that some materials be updated and new materials be added. The process of updating the RWMP frequently will provide and maintain a greater awareness of radioactive waste management. The following suggestions were made by the Subcommittee for updating the RWMP: (1) Security; (2) Uranium Mill Status with the change in Agreement State status in this area; (3) Update the tables; (4) Spent Fuel transportation and storage; (5) DRC’s process for review of license request and amendments; and (6) Perpetual care of the sites.
4. Chairwoman Langley said that an offshoot of the Subcommittee’s discussion of the Radioactive Waste Management Plan (RWMP) was for the Board to consider “putting together” its own guidelines to meet its statutory requirements. For example, she said, does the Board wish to have more guidance on how much information should be presented to them on specific issues?

Discussion by Board Members:

Kent J. Bradford, said “in regards to making rules,” there were currently procedures describing how the Division conducts business.

Stephen T. Nelson, Vice Chair, suggested the RWMP was analogous of a crosswalk. The RWMP explicitly “spells out” when to deal with an issue, and provides guidelines on how an issue could be resolved.

Dianne R. Nielson, Director, said that when the distinction between a guidance document and an administrative rule is the same, the administrative rule should be referenced. There is a “little bit” of a slippery-reference for guidance that should be considered. Is the RWMP providing guidance or is the RWMP providing guidance for an adopted, administrative rule? Although the Board may adopt the RWM Plan, it is not the same as adopting an administrative rule. This is the distinction we need to worry about, if the context of the RWMP is the same as the administrative rule. There is a process for how we view and provide direction. The “administrative rule” is the context for informing, directing and regulating people and industry. If “guidance documents” start defining what needs to be required, the regulatory process will lose hope.

Stephen T. Nelson, Vice Chair, said that Dianne Nielson’s clarification is what he meant when he suggested using the RWMP as a “crosswalk.”

Karen Langley, Chair, asked the Board to give concurrence, if the Board felt the Radioactive Waste Management Plan was statutory and met the recommendations of the audit.

MOTION MADE BY KENT J. BRADFORD THAT THE BOARD CONCUR WITH THE COMPLETION OF THE RADIOACTIVE WASTE MANAGEMENT PLAN, SECONDED BY DIANNE R. NIELSON.

MOTION CARRIED AND PASSED UNANIMOUSLY

**b. Discussion of the Proposed “Perpetual Care Fund” Report –
Dane Finerfrock, Loren Morton and Craig Jones**

Dane L. Finerfrock, Executive Secretary, said that after the last Board Meeting, the DRC Staff had a “brainstorming session.” Dane invited Craig Jones and Loren Morton, DRC Section Managers, to sit at the front and to be prepared to answer questions from the Board Members.

Dane asked the Board Members to refer to their outline in the “supplemental packet.” Dane provided the outline and summarized discussions by the DRC Staff. The following subjects were summarized by Dane:

- (1) Regulatory Analysis
 - (2) Purpose of Perpetual Care and Maintenance Fund
 - (3) Status Review of Low-Level Radioactive Waste Disposal Facilities that Closed
 - (4) Comparison of Siting Condition and Design of Closed Facilities with the Envirocare Facility
 - (5) Discussion of Credible/Plausible or Worst Case Site Failures
 - (6) Comparison of Utah's Perpetual Care Fund Cash Value with the South Carolina Washington and Texas Perpetual Care Funds
 - (7) Discussion of Time Value of Money
 - (8) Estimated Cost of Remediation of a Reasonable Failure versus a Worst Case Failure
- Questions that came up, was the risk.
- (9) Board Recommendation to Legislature

Questions by the Board:

Kent J. Bradford suggested that it would be worthwhile to have a smaller group or subcommittee to follow these subjects closer and bring periodic reviews to the Board as information was prepared.

Dane L. Finerfrock, Executive Secretary, reminded the Board that it already had one Subcommittee regarding the "Radioactive Waste Management Plan."

Karen S. Langley, Chair, encouraged the Board Members that were not previously involved in the Waste Management Subcommittee to become involved and participate on the Subcommittee. Ms. Langley, Chair, said involvement on the Subcommittee would give Board Members an opportunity to increase their understanding in issues that were not in their field and gain a better perspective on waste management.

Public Comments:

Jason Groenewald, HEAL Utah, said that South Carolina hired consultants to make recommendations. He said that the DRC may want to consider hiring a consultant, because, he assumed, this task would take a lot of time, expertise and energy. Hiring a consultant might be a way to ease the burden.

Ms. Langley, Chair, said the Board had "come to a point" where it could spend more time "looking at" the proposed list, or the Board could give the DRC authorization and concurrence to move forward with the Perpetual Care fund. Perhaps, as the Perpetual Care Fund is developed, the list may change or expand. She said the list was a start.

MOTION MADE BY ROD O. JULANDER FOR THE BOARD TO ACCEPT THE REST OF THE SUBCOMMITTEE'S INFORMATION, THEREBY GIVING DIRECTION TO THE EXECUTIVE SECRETARY TO MOVE FORWARD AND BEGIN THE WORK WITH THE SUBCOMMITTEE'S RECOMMENDATIONS, SECONDED BY STEPHEN T. NELSON.

MOTION MADE BY ROD O. JULANDER TO AMEND THE PREVIOUS MOTION MADE, THAT THE BOARD ADOPT AND CONTINUE WITH THE CURRENT SUBCOMMITTEE, SECONDED BY STEPHEN T. NELSON.

MOTION CARRIED AND PASSED UNANIMOUSLY

VI. URANIUM MILL TAILINGS UPDATE (Board Information item)

a. Rescheduling of the Briefing from International Uranium (USA) Corporation (IUC) – Loren Morton and Dane L. Finerfrock

Loren Morton, Manager, reported that IUC could not attend the Board Meeting today. He said the IUC had requested to update the Board at the next Board Meeting scheduled on January 7, 2005, if this met with Board approval. The Board concurred.

Loren said, at the present time, the IUC was deeply involved with the proposed Ground Water Discharge Permit. Loren said the public comment period for the permit started on Wednesday, December 1, 2004. Loren handed out a copy of the public notice that was published in the newspapers to the Board Members. Loren said the "Permit" and the "Statement of Basis" were posted on the DRC web page, and he said the public comment period would end on Friday, January 7, 2005.

Loren stated that he had not received any public comments thus far.

Documentation on Fernald Silo III – Dane L. Finerfrock

Dane L. Finerfrock, Executive Secretary, asked the Board Members to refer to the Memo from David Frydenlund, IUC, in their supplemental Board packets. Dane reported that around this time last year (2003) that DRC was involved with Envirocare and the shipments of the Fernald Silo I, II and III wastes to Envirocare. Dane reminded the Board Members that this was a very controversial issue and reiterated that Envirocare decided not to pursue the "Fernald wastes" for disposal.

Dane L. Finerfrock, Executive Secretary, said the Fernald site had issued an "RFP" (Request for Proposal) in which Fernald divides waste they

would like to “dispose of” into two waste streams: a waste stream from Silo I and II and a waste stream from Silo III. IUC has indicated to the DRC that it would like to be in a position to respond to the “Request for Proposal,” to compete for the waste from Silo III.

Dane L. Finerfrock, Executive Secretary, reported that IUC has requested, the following:

- (1) A first amendment which would allow them to store these materials. IUC is asking for a fast turn-around on a license amendment from DRC,
- (2) an 18-month time period where they would like to take these materials as an “alternative feed material” to process it their at their plant in Blanding.

Dane L. Finerfrock, Executive Secretary reported that IUC has proposed a very ambitious schedule for the Division to meet. Dane said that he expected this issue to be of great controversy.

Questions by Board Members:

Kent J. Bradford, asked if the license amendments were to be considered together as one amendment?

Dane L. Finerfrock, Executive Secretary responded: “No, the turn-around time for the first amendment storage has a very short turn around.”

Kent J. Bradford commented that it seems that this might put everybody in an awkward situation. They will store waste, but they will not receive approval for processing it until later.

Kent J. Bradford asked what guarantees there were, if the IUC never receives the second amendment that the Silo III material can be stored somewhere else?

Some of the Board Members had more questions regarding Envirocare’s interest on Silo III. Dane L. Finerfrock, Executive Secretary, invited Tye Rogers, Envirocare of Utah Inc., to address questions from the Board Members.

Public Comments:

Tye Rogers, Envirocare of Utah Inc., commented: As Dane has explained, Fernald has “come out” with two RFP’s; one RFP to take the Silo I and II, and the second to take the Silo III. Silo I and II, as Dane explained,

Envirocare will not be bidding on it--as of last year, Envirocare will not bid for Silo I and II waste. Silo III is something that Envirocare is looking at right now. It doesn't require us to go and do any license amendments. It meets our license, the 11e. (2) license, as it is right now. Envirocare is "looking at" and possibly "preparing a bid" to submit to Fernald. So, Envirocare is evaluating it right now. If that is something Envirocare can accept, then we will submit an RFP to Fernald next week. Silo III meets all our license requirements.

Questions by Board Members:

Rod O. Julander said: "I have a question. Do they plan to reprocess it and thus take it out of State regulation, is that correct?"

Dane L. Finerfrock, Executive Secretary responded: "No, I think while you were out, we became an Agreement State for the Uranium Mills, so it remains our issue throughout, regardless."

Gregory G. Oman asked: "Am I correct in thinking that they can receive it first if they get approval? But that doesn't necessarily mean they are going to mill it?"

Dane L. Finerfrock, Executive Secretary responded: "That is correct."

Karen S. Langley, Chair, added: "And I understand that is one of the questions in consideration."

Stephen T. Nelson, Vice Chair, asked: "Now, can this request by IUC trigger public comment?"

Dane L. Finerfrock, Executive Secretary responded: "We have already discussed this with them. We intend to have public comment and possibly a public hearing. So, they are planning on it."

Gregory G. Oman asked: "Would this be in Blanding?"

Dane L. Finerfrock, Executive Secretary responded: "They have suggested both Salt Lake City and Blanding. There has been nothing firmly decided because this is still very early, but because of the nature of the media attention, I'm bringing this to your attention right now."

John W. Thompson asked: "I have a question. This memo is dated the 1st of December 2004, and here it is the December 7, 2004. What is it that they are wanting, request on the turn-around?"

Dane L. Finerfrock, Executive Secretary added: “They want a letter from the Executive Secretary saying the schedule they are “looking at” the Board and the DRC will attempt to meet.”

Stephen T. Nelson, Vice Chair, asked: “What is the statutory requirement that you can accommodate them with? How much time do we need to give to the public to comment?”

Dane L. Finerfrock, Executive Secretary: “We normally provide 30-days for public comment.”

Stephen T. Nelson, Vice Chair, said: “So, for the public comment, 30-days is the minimum days to comment?”

Dane L. Finerfrock, Executive Secretary answered: “Right.”

Rod O. Julander asked: “The Board will not vote on this at all. You will get to grant the license? Dane, this won’t be approved by the Board?”

Dane L. Finerfrock, Executive Secretary responded: “Issuance of the license is something that you have empowered the Executive Secretary with. If there are any appeals, that is where your role is. It will be brought to your attention as the first step in the process.”

b. Status of 11e.(2) License Conversion – John Hultquist

John Hultquist, Manager, reported that DRC is now an Agreement State for the 11e.(2) Uranium Mill sites. The DRC Staff have converted the license to Utah format and DRC has sent them back to the licensees for comment. DRC gave the licensees until the end of November 2004 for comments. DRC has received comments from all the licensees of the facilities. Most of the comments were received from Rio Algom, Plateau and Envirocare. They are minor issues.

Questions by the Board Members:

Karen S. Langley, Chair, asked: “So, the time-table for the rest of the comments to be received are?”

John Hultquist, answered: “Probably, at the end of this month.”

VII. OTHER DIVISION ISSUES (Board information item)

a. Annual Radon Program Update – John Hultquist

John Hultquist reported to the Board on the “2004 Newborn Program Annual Report.” He said the mothers of newborns were given literature and coupons in a package about radon. They take it home with them. If they are interested, they fill it out and send back to DRC. If they return the coupon, they receive a free, radon test kit from DEQ.

The DRC has given out about 1,600 Newborn Program test kit certificates. DRC has received about 300 radon test kit results from the laboratory.

Most of the result are coming back less than 4pCi/l. There are about 18% that are coming back greater than 4pCi/l. The 300 radon test kits have been “broken down” into the following results: the maximum radon level being 35.9, the average being 2.6. 82% are less than 4pCi/l.

The DRC is going to send out “reminder cards” to see if the DRC can get some of the test kits back to get analyzed. Some of the 18% of the homes tested came out high. After the test, many homes actually took the next step and followed through with mitigation. This is something worth knowing: the high concentrations, and how many actually did something about it.

Questions by Board Members:

Rod O. Julander asked: “When you sent out the card, did you include a remedy, or who to contact?”

John Hultquist responded: “The public can call us or email us. We might develop another card regarding mitigation. It will not be a reminder card. It will just say: “Did you notice that your concentration was for 4 pCi/L? Did you take action?” The card will be a simple yes or no, and comments. We did send out a reminder card, but we do not have any results for you today.”

John said the DRC has sent out 30,000 packages to the hospitals. DRC does not know whether the hospitals are actually giving them out to the newborn mothers.

VIII. PUBLIC COMMENT

James O’Neal, private citizen from Provo, Utah, Degree in Languages, commented that his assumption was the DRC is “going over” the same oversight plan as in April 1994. He said that the most important issue today was the

consequences of 911. He said the Radioactive Waste Management Plan should be modified to include potential terrorist activity.

Mr. O'Neal said that he attended a legislative committee in which there were discussions about a higher-level waste: B and C waste. He said B and C waste was the biggest "potential health problem" in the State. He stated that the waste should not be brought into Utah. He said if the waste is not here, it is not a threat. He asked the Board to "back Utah" and do something about the B and C waste. He thanked the Board Members.

IX. OTHER ISSUES

Next Board Meeting – January 7, 2005, DEQ Bldg #2, 168 North 1950 West, Conference Room 101, Salt Lake City, Utah, 2:00 – 4:00 P.M.

THE BOARD MEETING ADJOURNED AT 3:40 P.M.